

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 12 June 2008

Case No.: 2007-WIA-00006

In the Matter of

ROCKY MOUNTAIN/HAWAII REGIONAL CONSORTIUM,
Complainant,

v.

U.S. DEPARTMENT OF LABOR,
Respondent.

DECISION AND ORDER GRANTING RESPONDENT'S
MOTION FOR SUMMARY DECISION

This case arises under the provisions of the Workforce Investment Act, 29 U.S.C. § 2911 et. seq. (WIA or the Act) and the regulations contained at 20 C.F.R. § 660 et. seq. The WIA provides funding for job training and employment programs for migrant and seasonal farm workers under the National Farmworkers Jobs Program (NFJP). Parties interested in receiving such grants apply directly to the Department of Labor, pursuant to Solicitations for Grant Applications (SGAs) published in the Federal Register. Parties which unsuccessfully apply for grants may request review of the Grant Officer's decisions by the Administrative Law Judges (ALJ). 20 C.F.R. § 667.800.

In this matter, the SGA informed potential applicants that \$4,950,000 had been appropriated for permanent housing assistance. *72 Fed. Reg. 19966; Administrative File (AF) at E1*. The SGA required that the DOL create advisory review panels to evaluate applications under the evaluation criteria set forth in the SGA. *AF at E5-6*. The SGA also stated that the Grant Officer would select proposals that were most responsive to the requirements of the SGA as rated by the advisory review panels. *AF at E3*. The review panel gave the Complainant, Rocky Mountain/Hawaii Regional Consortium, a score of 43 out of 100 points, which was tied for the lowest score among the twenty applications submitted. *AF at C; Declaration of James W. Stockton, ¶4*. The Grant Officer did not select either of the lowest-scoring organizations to receive an award. *Declaration of James W. Stockton, ¶4*. The Grant Officer decided not to award grant funds to the Complainant to operate a housing assistance program for migrant and seasonal farmworkers for Program Year 2007. The Grant Officer provided a summary of the strengths and weaknesses of its proposal as identified by the panel. *AF at B*.

On July 16, 2007, Complainant requested a hearing before the ALJ, contending that the Grant Officer's decision is not in the best interest of migrant and seasonal farmworkers because no awards were made for housing assistance in Arizona, Colorado, Idaho, Hawaii, Montana, Nevada, New Mexico, Utah and Wyoming – the states encompassed by the Complainant's proposal. *AF at A4-6*. Complainant did not allege that the Grant Officer did not properly follow the procedures outlined in the SGA when he made his decision not to select the Complainant for a grant.

On March 10, 2008, Respondent, U.S. Department of Labor, submitted the Grant Officer's Motion for Summary Decision, arguing that summary decision is appropriate because there is no genuine issue as to any material fact and the Grant Officer is entitled to a decision in his favor as a matter of law. On April 7, 2008, the undersigned issued an Order To Show Cause, ordering the Complainant to show cause within 21 days why the Grant Officer's Motion for Summary Decision should not be granted. To date, the Complainant has not responded.

Standard of Review

Any party may, at least twenty days before the date fixed for any hearing, move for summary decision on any part of the proceeding. 29 C.F.R. § 18.40(a). Within ten days of service of the motion, any other party may serve opposing affidavits or countermove for summary decision. *Id.*

Pursuant to Section 18.40(d), the ALJ may issue summary decision if the “pleadings, affidavits, [and] material obtained by discovery or otherwise show that there is no genuine issue as to any material fact.” The Administrative Review Board (ARB) has stated that a material fact is “one whose existence affects the outcome of the case,” and that a genuine issue exists when “the nonmoving party produces sufficient evidence of a material fact so that the fact-finder is required to resolve the parties’ differing versions at trial.” *Reddy v. Medquist, Inc.*, ARB No. 04-123, ALJ 2004-SOX-35 (Sept. 30, 2005), slip op. at 4.

When a motion for summary decision is made and supported, “a party opposing the motion may not rest upon mere allegations or denials of such pleadings. Such response must set forth specific facts showing that there is a genuine issue of fact for hearing.” 29 C.F.R. §18.40(c). Once the moving party demonstrates an absence of evidence supporting the non-moving party’s position, “the burden shifts to the non-moving party to establish the existence of an issue of fact that could affect the outcome of the litigation.” *Reddy*, slip op. at 4-5.

As required by §18.40(a), Respondent’s Motion was timely submitted more than twenty days before the hearing. The evidence of record demonstrates that the Grant Officer’s decision to not select Complainant as a WIA grantee was reasonable. As the Respondent notes, the Grant Officer is not required to award a grant to organizations that have failed to demonstrate the capability to effectively administer grant funds for a housing assistance program as reflected in their proposals. The Grant Officer has an obligation to select the best-qualified applicants in order to ensure that the beneficiaries of the program – migrant and seasonal farmworkers – are provided the best available services. As the Respondent stated, there is no requirement in the

SGA that award decisions must strike some kind of geographic balance. The time provided by §18.40(a) for response to Respondent's Motion has expired and no response to the Respondent's Motion for Summary Decision has been received. Therefore, Complainant has failed to carry its burden of establishing that there is sufficient evidence of a material fact at issue, such that the undersigned must resolve the parties' differing versions at trial. Accordingly, Respondent's Motion for Summary Decision is granted.

ORDER

IT IS ORDERED THAT Respondent's Motion for Summary Decision is GRANTED, and Complainant's appeal is hereby DISMISSED with prejudice.

A

John M. Vittone
Chief Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file exceptions ("Exception") with the Administrative Review Board ("Board") within twenty (20) days of the date of issuance of the administrative law judge's decision. *See* 20 C.F.R. § 667.830. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Your Exception must specifically identify the procedure, fact, law, or policy to which exception is taken. You waive any exceptions that are not specifically stated. Any request for an extension of time to file the Exception must be filed with the Board, and copies served simultaneously on all other parties, no later than three (3) days before the Exception is due. *See* 20 C.F.R. § 667.830; Secretary's Order 1-2002, ¶4.c.(42), 67 Fed. Reg. 64272 (2002).

A copy of the Exception must be served on the opposing party. *See* 20 C.F.R. § 667.830(b). Within forty-five (45) days of the date of an Exception by a party, the opposing party may submit a reply to the Exception with the Board. Any request for an extension of time to file a reply to the Exception must be filed with the Board, and a copy served on the other party, no later than three (3) days before the reply is due. *See* 20 C.F.R. § 667.830(b).

If no Exception is timely filed, the administrative law judge's decision becomes the Final Decision and Order of the Secretary of Labor pursuant to 20 C.F.R. § 667.830(b) unless the Board notifies the parties within thirty (30) days of the date of issuance of the administrative law judge's decision that it will review the decision. Even if an Exception is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the filing of the Petition notifying the parties that it has accepted the case for review. *See* 20 C.F.R. § 667.830(b).